

**To:** Newton, Caroline[Newton.Caroline@epa.gov]  
**From:** Grossman, Lenny  
**Sent:** Wed 2/20/2013 3:56:50 PM  
**Subject:** AES - RA Fact Sheet for EQB  
[20120926 Final AES Notice Letter with Appendicies \(2 Mb\).pdf](#)  
[20130214 v3 Addendum to Notice letterhead.pdf](#)  
[R0011702.JPG](#)  
[R0011704.JPG](#)  
[R0011724.JPG](#)

The widespread land placement of "Agremax," an aggregate made of ash generated by the AES coal fired power plant in Guayama, Puerto Rico and sold as a "product" under a PR Environmental Quality Board (EQB) solid waste exemption, may present significant environmental and health risks from leaching heavy metals. Our analysis of Agremax by the EPA Leaching Environmental Assessment Framework (i.e., EPA Method 1313 at: [http://www.epa.gov/osw/hazard/testmethods/sw846/new\\_meth.htm](http://www.epa.gov/osw/hazard/testmethods/sw846/new_meth.htm)) reveals that Agremax leaches several heavy metals, including Arsenic, a known human carcinogen, well above health based standards. Similar leaching was also demonstrated by AES's own analyses by the EPA Toxicity Characteristic Leaching Procedure, although AES chose to focus on the results not exceeding the regulatory standards for hazardous waste, rather than the potential environmental harm.

In September 2012, the environmental group Public Justice issued a notice of intent to sue AES under RCRA §7002 (please see attached), but has since delayed taking suit. EPA shares Public Justice's concerns. The notice of intent to sue, in fact, quotes extensively from EPA's November 2011 letter to EQB Chairman Nieves, which requested reconsideration of the EQB Resolutions and Notifications that provide the solid waste exemption for Agremax, to incorporate, among other things, risk evaluation and engineering controls. In a January 2012 reply, Chairman Nieves stated that EQB was developing draft guidelines for the use of Agremax. EPA responded in February 2012, and indicated that it remained concerned with the ongoing use of Agremax in the absence of appropriate engineering controls. EQB subsequently gave EPA draft guidelines to review, and EPA provided comments in a July 2012 letter. EPA later spoke with EQB Chairman Nieves, and was informed that EPA's comments, along with others received from the public and regulated community, were being evaluated by an independent committee and could not be reviewed by EQB until the committee's review was completed. Chairman Nieves did not, however, know when this would occur.

Among EPA's concerns is potential leaching from Agremax deposited at an AES well field north of the AES Guayama generating facility (please see attached photographs). EPA notes that, beyond being located in a flood plain, the AES well field presents a number of potential environmental risk factors, because it is situated adjacent to wetlands and a surface water body, the Guaymani river (which EPA understands is used for subsistence fishing), as well as near a canal receiving and distributing water from nearby Lake Melania. It is also located, via the Guaymani River, upstream of several federally endangered species. EPA met with AES in December 2012, and discussions with the company regarding EPA's concerns are ongoing.

We would like EQB to take the following actions:

1. Issue, with input from EPA, directives, resolutions, and/or permits, as necessary, to allow AES to market Agremax for use as daily cover in lined, operationally compliant solid waste landfills in Puerto Rico, as it did previously by its 2005 Resolution allowing such use at the Salinas Landfill. We note that such directions, resolutions and/or permits must include appropriate controls for fugitive dust.
2. Revise, with input from EPA, its draft guidelines on Agremax use, to include appropriate engineering and environmental control requirements, so as to fully protect human health and the natural resources of Puerto Rico, consistent with EPA's July 2012 comments.